

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

WP(C).No. 31763 of 2006(F)

PETITIONER:

PORATHISSERY GRAMA PANCHAYATH,
P.O. KARUVANNUR, THRISSUR,
REPRESENTED BY ITS PRESIDENT.

BY ADV. SRI.P.RAMAKRISHNAN
SMT.PREETHI RAMAKRISHNAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, DEPARTMENT OF LOCAL SELF
GOVERNMENT, THIRUVANANTHAPURAM.

2. IRINJALAKUDA MUNICIPALITY,
IRINJALAKUDA, REPRESENTED BY ITS SECRETARY.

R1 BY ADV. SRI. K.J. MOHAMMED ANZAR.
R2 BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.A.S.SAJUSH PAUL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02/02/2007,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31763 OF 2006

Dated this the 2nd day of February, 2007

JUDGMENT

Porathissery Grama Panchayat is the petitioner and the Irinjalakuda Municipality is the 2nd respondent. The petitioner relies on Ext.P1 sketch to show that the territorial area of the petitioner Panchayat takes in a part of the Irinjalakuda Village. The petitioner contends that 5.51 acres of land in Survey No.232/2 of Irinjalakuda Village belongs to the Panchayat and relies on Ext.P2 certificate to support that claim. Petitioner states that the said land is being used by the 2nd respondent-Municipality on the strength of an order issued by the erstwhile Government of Cochin accepting their resolution of the Municipal Council of 21.1.1941. The land is being used by the Municipality as a trenching ground for dumping waste. It is alleged that maintenance of environmental hygiene is given a go by and solid and liquid wastes are dumped indiscriminately without resorting to any scientific method. In the wake of the out break of epidemics in the various parts of the State, the petitioner-Panchayat felt that the trenching grounds would be an impediment for the healthy existence of the residents of the Panchayat and accordingly resolved to prohibit deposit of waste in the property by the 2nd respondent-Municipality. Ext.P3 notice was issued in this regard

to the Municipality. Petitioner states that Ext.P3 was completely ignored by the Municipality which continued to dump waste on the property. In response to yet another letter written to the Municipality, the Municipality has issued Ext.P4 reply through which the petitioner's claim over the property is questioned. Petitioner states that the 2nd respondent Municipality is continuing its defiant stand and is still depositing waste in the trenching grounds and it is understood that even a foundation stone laying ceremony has been conducted on the property for an alleged establishment of an incinerator on the trenching ground. Petitioner contends that the Municipality has no authority at all to make any construction in Survey No.232/2 and raising various grounds, the petitioner prays that Ext.P4 be quashed and writ of mandamus be issued commanding the 2nd respondent not to dump waste or carryout any construction in Survey No.232/2 of Inrinjalakuda Village. The petitioner also prays for a declaration that the petitioner has got over the right to regulate the use of land in question which is presently used as a trenching ground by the 2nd respondent.

2. The Municipality has filed a very detailed counter affidavit denying the claims and contentions of the petitioner-Panchayat. The competence of the President of the Panchayat to represent the Panchayat in legal proceedings is questioned at the very outset. It is

then contended that since even going by the averments in the Writ Petition what has been projected is dispute between the two local authorities, this is a matter which is ought to be settled by the Government. It is pointed out that this Court has directed the Government to form a committee for resolving the disputes between different local bodies and pursuant to that direction such a committee has been constituted by the Government. It is for the petitioner to raise this dispute before the said committee before coming over to this Court under Article 226. The claim of the petitioner-Panchayat that the property in question having an extent of 5 acres and 51 cents in Survey No.232/2 of Irinjalakudy Village belongs to the petitioner is totally wrong according to the counter affidavit. It is pointed out that the property belongs to the Municipality and is being used by the Municipality as a trenching ground. It is pointed out that the property was originally acquired on the request of the Municipality as early as in 1939 and an award was passed by the Diwan Peshkar of the Government of Cochin as per award No.229/14. Pursuant to that award the entire compensation amount for the property was paid by the Municipality to the Government as requested by them. Upon payment of compensation, the property was taken possession and was handed over to the Municipality. Later letter was sent by the Diwan Peishkar to the

Secretary to Government, Development Department, seeking to accept the award dt.10.8.1939. As Ext.R2(a) is copy of the above letter. Ext.R2(b) order of the Government of his Highness Maharaja of Cochin dt.14.8.39 in acceptance to the award is also produced. It was noticed that there was over payment by the Municipality and accordingly a letter was addressed by the Diwan Peishkar on 12.8.39 informing about the over payment and enquiring as to what is to be done by the said amount. Ext.R2(c) is copy of that letter. On the above reasons, it is contended, that the property is now in the possession of the Municipality and they are the absolute owners. As per the procedure regarding keeping revenue records, once a property is acquired under the Land Acquisition proceedings and when the proceedings are completed, the land so acquired shall be transferred to the Puramboke account of revenue. On that basis, the property having an extent of 5 acres and 51 cents covered by the above award is transferred in the Revenue Records as Revenue Puramboke. This is why in the Revenue records the property shown as Puramboke. The Government of His Highness Maharaja of Cochin issued proceedings on 18.3.1940 directing change of registry of Puramboke up to land acquisition or surrender of full rights. Ext.R2(d) dt.18.3.40 is copy of the said proceedings. It is further contended that while the Municipality was in possession of the property

pursuant to the land acquisition proceedings a resolution was adopted by the Municipality on 8.11.1116 corresponding to 21.1.1941 by which the Municipality requested the Revenue for permission/sanction to use the above acquired property as a trenching ground. The resolution in this regard passed by the Municipality was resolution No.4. The said resolution was forwarded to the Government of His Highness Maharaja of Cochin and as per order dt.25.2.1941, the proposal contained in the resolution was accepted by the Government. Ext.R2(e) is copy of the order issued by the Government in that regard. It is further contended that the Panchayat has absolutely no right or title or interest over the land. The property is recorded as Puramboke in the revenue registry only in view of transfer of the registry to Government consequent to the acquisition, for the purpose of the Municipality. Section 279 of the Panchayat Raj Act invoked by the petitioner is not applicable at all to the present situation. Ext.P2 certificate issued by the Tahsildar is totally incorrect and the said certificate is issued without verifying the records and without verifying the acquisition records mentioned above. It cannot be relied on by the petitioner-Panchayat for claiming the right over the property. Answering to the grievance that user of the property-the Municipality as trenching ground is creating environmental problems, it is contended that the Municipality has been using the property as

trenching ground, burial ground/cremation ground from very early times as mentioned above. Out of the total 5 acres and 51 cents, 50 cents has been permitted to use by the SNDP for using as a burial ground. SNDP is now using the said 50 cents for the said purpose as a common burial ground. In the remaining 5 acres, the Municipality has done teak plantations as Green Belt on the outer edge. Only in the inner area of the property trenching is being done. The wastes brought from the Municipal area are being removed to this trenching ground and are being managed in the trenching area and there is no hygiene problem. It is then contended that the establishment of the solid Waste Management Plant is initiated by the Municipality on the basis of the Clean Kerala Mission Scheme to clean the waste which is being brought to the trenching ground of the Municipality. Once the project is implemented, the waste management of the Municipality will become foolproof.

3. I have heard the submissions of Sri.P. Ramakrishnan, learned counsel for the petitioner and those of Sri.K.K. Chandran Pillai, learned Standing Counsel for the Irinjalakuda Municipality. Making submissions on the basis of the averments in the Writ Petition and the documents placed on record, Sri. Ramakrishnan would invite my special attention to Exts. P1 and P4. He referred to Section 4(1), 2(26), 166, and 279 of the

Panchayat Raj Act. Sri. K.K. Chandran Pillai, learned Standing Counsel for the Municipality could meet all the submissions of Sri.Ramakrishnan. The learned counsel would refer to the counter affidavit in detail and invite my attention to various documents placed on record by the Municipality, particularly Exts.R2(b), (c), (d), (e).

4. Having considered the rival submissions made at the bar in the light of the rival pleadings and documents placed on record by the parties, I have no difficulty to accept the stand of the Municipality that the property in question having an extent of 5.51 acres in Survey No.232/2 of Inrinjalakuda Village belongs to the Municipality and has been for several decades under the absolute possession and enjoyment of the Municipality. Ext.P2 issued by the Tahsildar has obviously been issued without referring to the Land Acquisition Proceedings. Ext.P2 therefore cannot be of any consequence in this case. Of course, the ground in question is situated within the area of the petitioner-Panchayat and the Panchayat will certainly have concern for the health of its citizenry. But then I notice that the Municipality has planted teak trees around substantial portion of the property in question as Green Belt on the outer edge. Waste which is being brought from the Municipal area is being removed into the trenching ground which is inside the Green Belt. No material is placed by the petitioner to show that the trenching

ground as it obtains is causing serious hygienic problems to the inhabitants of the petitioner-Panchayat. As for the steps taken by the Municipality for the establishment of the solid waste management plant, it is seen that the project has been taken up on the basis of the Clean Kerala Vision Scheme. The plan prepared by the Municipality has been approved by the District Planning Committee which significantly includes members of the petitioner-Panchayat also. About Rs.20 lakhs is sanctioned to the Municipality by the Clean Kerala Mission out of the total cost of the project of Rs.32.90 lakhs. It is seen that the work has already been tendered and work order has been issued and the contractor had collected materials. There is no reason to turn down the submission of the learned Standing Counsel that once this project is implemented, the waste management of the Municipality will become even better is not foolproof.

The result of the above discussion is that the Writ Petition will stand dismissed but in the circumstances without costs.

PIUS C. KURIAKOSE, JUDGE

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